Statute

42 U.S.C. §2000a-1
Fair Housing Act of 1964 1

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1971
No. 71-289

ESTATE OF ESTHER ZAHN,

Deceased.

MARGARET ZAHN, PAUL ZAHN
and OTTO ZAHN,

Plaintiffs and Appellants,

vs.

SECURITY PACIFIC NATIONAL BANK,
Executor, THE SALVATION ARMY,
and THE STATE OF CALIFORNIA,

Defendants and Respondents.

PETITION FOR REHEARING

We petition for rehearing of the order of November 9, 1971 denying certiorari.

The will denies the equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution, and is in conflict with earlier and later decisions of the Supreme Court, and the Fair Housing Act of 1964.

42 U.S.C. §2000a-1.

On November 22, 1971, Mr. Chief Justice Burger said in Reed v. Reed, No. 70-4 as follows:

> "The Equal Protection Clause of that Amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920). . . . "
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> "The objective of §14-312 clearly is to establish degrees of entitlement of various classes of persons in accordance with their varying degrees and kinds of relationship to the intestate. Regardless of their sex, persons within any one of the enumerated classes of that section are similarly situated with respect to that objective. By providing dissimilar treatment for men and women who are thus similarly situated, the challenged section violates the Equal Protection Clause. Royster Guano Co. v. Virginia, supra."

The language of the will, paragraph three is as follows:

> "I want to start a Rest Home at the corner 3503 So. Flower St. Los Angeles, California for Christian women and girls who have no relatives, no smokers or drinkers only deserving citizens who are Native Californians. Perhaps the Salvation Army can recommend them. I would like a new Modern Building to be erected at the corner of 3503 So. Flower St. Los Angeles, Cal to be called 'The Zahn Memorial.' This is memory of my father and mother Paul and Louisa Zahn who came to Los Angeles Cal in 1887. There are enough 1st Trust Deeds and real Estate to sell and money to start a new Building."

In Atlanta Motel v. U.S., 379 U.S. 241, the court said:

The stated purpose of the Civil Rights Act was to

> "promote the general welfare by elimintating discrimination based on race, color, religion or national origin in public accommodations. . . ." Atlanta Motel v. U.S., 379 U.S. 241, 245; 13 L. Ed. 2d 258, 262.

> ". . . Mr. Justice Bradley inferentially found that innkeepers 'by the laws of all the states, so far

as we are aware, are bound, to the extent of their facilities to furnish proper accommodation to all unobjectionable persons who in good faith apply for them. 109 U.S. 25; 27 L.ed. 844." Atlanta Motel v. U.S., supra, 260.

". . . Congress may -- as it has -- prohibit racial discrimination by motels serving travelers, however local their operations may appear."

The court further points out that if the means selected to eliminate racial discrimination are reasonable and appropriate then a housing accommodation has no right to select its guests as it sees fit, free from governmental regulation. 379 U.S. 241, 258; 13 L.ed. 2d 258, 269.

Katzenbach v. McClung,
379 U.S. 294; 13 L.ed. 2d 290;

U.S. v. Darby,
312 U.S. 100.

The provisions of the will are therefore illegal and against public policy.

Jeffries v. Alexander,
8 H.L.C. 594, 648;

Board of County Commissioners v. Scott,
88 Minn. 386, 93 N.W. 109.

We pray for rehearing in the light of recent holdings of this court with reference to equal protection and sex discrimination.

Respectfully submitted,

MORRIS LAVINE

Attorney for Petitioners

CERTIFICATE OF COUNSEL

I, counsel of record, hereby certify that this petition for rehearing is filed in good faith and not for delay and is meritorious and based on holdings of this court in later decisions.

MORRIS LAVINE
Attorney for Petitioners